



Litigation Planning: Dealing with the Definitions of “Internet Applicant”

Best Practices Checklist

1. *Deal with the New Definitions:*

- Identify the appropriate business entities whose actions impact how you meet the definition of internet applicant. For example, Operations, Human Resources, Information Technology (IT), Legal.
 - Discuss new definitions in detail with these business entities.
 - Review the impact of the definitions on your current recruitment and application procedures.
 - Identify the impact of actions these business entities are taking under your current recruitment and application procedures on how you meet the definition of internet applicant.

- Carefully review your recruitment and application procedures:
 - Understand the effects of your use of various recruitment technologies.
 - How many applicants are you getting?
 - How are you capturing information about these applicants?
 - Understand how your recruitment technologies interact.
 - Identify any metadata created or captured by your recruitment technologies and application procedures.

2. *Limiting Your Liability:*

- Examine your recruitment and application procedures to ensure you are meeting your business needs in a manner that minimizes your record-keeping obligations.

- Maintain data in a manner that meets your obligations without increasing your liability.
 - Keep only what is required.
 - Think about metadata.



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3. Controlling Discovery:

- If possible, prior to litigation, meet with IT:
 - Review your systems fully to identify all potential sources of information.
 - Discuss archiving and back-up procedures.
 - Identify duplicate sources of information and develop a strategy to pull from only one source.

- Pursuant to proposed F.R.C.P. amendments, meet and confer early with opposing counsel to discuss e-discovery issues including:
 - Scope of claims
 - Format of production
 - Information to be captured in analytical databases.

4. Protecting Data:

- Review regulations regarding securing and protecting data to ensure compliance.
 - See IE Discovery's "*Litigation Planning: How to Define an Applicant in the Electronic Age: List of Resources*" for recommended documents to review.
- Take necessary steps to restrict user access to data as appropriate.
- Take necessary steps to physically protect data as appropriate.
- Review data for Privacy Act information and mark documents sensitive prior to production.
- If Privacy Act information is in your document collection, develop a Stipulated Joint Agreement with opposing counsel regarding steps taken to protect data.



5. Working with Experts:

- Discuss with your experts the effect the new definitions have on the methods they use to validate any selection procedures.
- Discuss the need to integrate information stored in multiple locations (such as databases) for analysis.
- Consider discoverability concerns regarding information provided to experts.
- Protect any Privacy Act data provided to experts.